

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7133

Petition of Magic Group, LLC, d/b/a Magic Mountain)
vs. Central Vermont Public Service Corporation re:)
dispute concerning the offering of an Interruptible and)
Supplemental Service Agreement with Magic Group,)
LLC)

Order entered: 12/22/2005

I. INTRODUCTION

On November 22, 2005, Magic Group LLC, d/b/a Magic Mountain ("Magic Mountain"), filed a Petition for Order for a Supplemental Service Agreement ("Petition"), in which it requested that the Vermont Public Service Board ("Board") issue an Order directing Central Vermont Public Service Corporation ("Central Vermont" or "CVPS") to provide an Interruptible and Supplemental Service Agreement to Magic Mountain. Magic Mountain's Petition also requested that the Board award monetary and punitive damages. Magic Mountain included a proposed special contract ("Special Contract") with its Petition.

On December 7, 2005, Magic Mountain filed an amended Petition, which again requested that the Board require a special contract, but removed Magic Mountain's request for monetary and punitive damages.

On December 12, the Vermont Department of Public Service ("Department") filed a letter that proposed certain changes to the Special Contract, which, if adopted, would lead the Department to recommend that the Board approve the Special Contract without investigation or hearing. Moreover, the Department recommended that the standard notice requirements for special contracts be waived, and that the Special Contract become effective immediately upon Board approval. Also on December 12, Central Vermont filed a letter which, while indicating that it took no position whether the Board should approve the Special Contract, stated that CVPS

did not object to the waiver of the notice requirements nor to the Special Contract becoming effective immediately upon Board approval, with the inclusion of the modifications recommended by the Department.

I held a prehearing conference on December 13, 2005. Robin Stern, Esq., appeared on behalf of Magic Mountain, Carolyn Browne Anderson, Esq., appeared on behalf of CVPS, and Jim H. Porter, Esq., appeared on behalf of the Department. Prior to the prehearing conference, the parties met, and reached agreement on the issues in dispute.

On December 20, 2005, the Department filed a Memorandum of Understanding ("MOU"), which was signed by Magic Mountain, CVPS, and the Department. Also on December 20, 2005, CVPS filed a Special Contract, No. 798, that provides for interruptible and supplemental service to Magic Mountain, reflects the modifications recommended by the Department, and will become effective upon Board approval. The MOU resolves all complaints against CVPS brought by Magic Mountain, and provides that simultaneously upon approval of Special Contract No. 798 and its execution by Magic Mountain and CVPS, this Docket will be dismissed with prejudice.

I recommend that the Board dismiss this proceeding with prejudice, and close this Docket.

II. FINDINGS

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

1. Magic Mountain, Central Vermont, and the Department agree that the Special Contract completely resolves all claims that were brought or could have been brought by Magic Mountain against CVPS. MOU ¶6.

2. The Special Contract entered into by CVPS and Magic Mountain provides that CVPS will supply interruptible and supplemental service to a portion of the Magic Mountain Ski Area located in the Town of Londonderry. In consideration thereof, Magic Mountain agrees to reduce its load on CVPS's system by predetermined amounts when requested to do so.

3. The Department recommends that the Board approve the Special Contract as it contains the modifications sought by the Department. *See*, DPS letters of 12/12/05 and 12/19/05.
4. The parties agree that upon approval by the Board and execution of the Special Contract, this Docket will be dismissed with prejudice. MOU ¶7.
5. The parties agree that the MOU is not to be construed as an admission of liability on the part of Central Vermont. MOU ¶9.
6. The MOU provides that it is governed by Vermont law, and that any disputes under the MOU shall be decided by the Board. MOU ¶10.

III. DISCUSSION

The MOU represents an agreement that will allow Magic Mountain to be served under an interruptible and supplemental service agreement that is comparable to special contracts between Central Vermont and several other ski areas in its service territory. If the Board approves the Special Contract as proposed, it should allow Magic Mountain to take service under the Special Contract during its critical snowmaking period.

IV. CONCLUSION

In light of the parties' stipulation, and having reviewed Special Contract No. 798, I recommend that the Board dismiss this Docket with prejudice, and simultaneously approve Special Contract No. 798. Moreover, I recommend that Special Contract No. 798 become effective immediately upon the Board's approval.

Because it is not adverse to any party, this Proposal for Decision has not been served on the parties to this proceeding. *See* 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 21st day of December, 2005.

s/J. Randall Pratt

John Randall Pratt
Hearing Officer

V. BOARD DISCUSSION

We conclude that the Hearing Officer's proposed decision represents an appropriate result under these circumstances, but emphasize that our approval of Special Contract No. 798 should not be construed to imply that any party has a *right* to a special contract under 30 V.S.A. § 229. Central Vermont should take all reasonable steps in its rate design to consider providing services and rates to comparably situated customers through tariffs, rather than through Special Contracts.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings, conclusions and recommendations of the Hearing Officer are accepted.
2. This Docket is dismissed with prejudice.

Dated at Montpelier, Vermont, this 22nd day of December, 2005.

s/James Volz _____))	
_____))	PUBLIC SERVICE
_____))	BOARD
s/John D. Burke _____))	OF VERMONT

OFFICE OF THE CLERK

FILED: December 22, 2005

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.